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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

13 **JOSH LA VENIA**
14 **3222 Bogert Trail**
Palm Springs, CA 92264

15
16 Respondent.

Case No.

STATEMENT OF ISSUES

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about September 27, 2010, the Board of Registered Nursing, Department of
24 Consumer Affairs received an application for a Registered Nurse License from Josh La Venia
25 (Respondent). On or about September 20, 2010, Josh La Venia certified under penalty of perjury
26 to the truthfulness of all statements, answers, and representations in the application. The Board
27 denied the application on December 16, 2010.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

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1 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
2 substantially benefit himself or herself or another, or substantially injure another.

3 (3) (A) Done any act that if done by a licensee of the business or profession
4 in question, would be grounds for suspension or revocation of license.

5 (B) The board may deny a license pursuant to this subdivision only if the
6 crime or act is substantially related to the qualifications, functions, or duties of the
7 business or profession for which application is made.

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9 7. Section 482 of the Code states:

10 Each board under the provisions of this code shall develop criteria to evaluate
11 the rehabilitation of a person when:

12 (a) Considering the denial of a license by the board under Section 480; or

13 (b) Considering suspension or revocation of a license under Section 490.

14 Each board shall take into account all competent evidence of rehabilitation
15 furnished by the applicant or licensee.

16 8. Section 2761 of the Code states:

17 The board may take disciplinary action against a certified or licensed nurse or
18 deny an application for a certificate or license for any of the following:

19 (a) Unprofessional conduct, which includes, but is not limited to, the
20 following:

21

22 (f) Conviction of a felony or of any offense substantially related to the
23 qualifications, functions, and duties of a registered nurse, in which event the record of
24 the conviction shall be conclusive evidence thereof.

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26 9. Section 2762 of the Code states:

27 In addition to other acts constituting unprofessional conduct within the meaning
28 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

....

(b) Use any controlled substance as defined in Division 10 (commencing with
Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription, consumption,
2 or self-administration of any of the substances described in subdivisions (a) and (b) of
3 this section, or the possession of, or falsification of a record pertaining to, the
4 substances described in subdivision (a) of this section, in which event the record of
5 the conviction is conclusive evidence thereof.

6 REGULATORY PROVISIONS

7 10. California Code of Regulations, title 16, section 1444 states:

8 A conviction or act shall be considered to be substantially related to the
9 qualifications, functions or duties of a registered nurse if to a substantial degree it
10 evidences the present or potential unfitness of a registered nurse to practice in a
11 manner consistent with the public health, safety, or welfare. Such convictions or acts
12 shall include but not be limited to the following:

13 (a) Assaultive or abusive conduct including, but not limited to, those violations
14 listed in subdivision (d) of Penal Code Section 11160.

15 (b) Failure to comply with any mandatory reporting requirements.

16 (c) Theft, dishonesty, fraud, or deceit.

17 (d) Any conviction or act subject to an order of registration pursuant to Section
18 290 of the Penal Code.

19 11. California Code of Regulations, title 16, section 1445 states:

20 (a) When considering the denial of a license under Section 480 of the code,
21 the board, in evaluating the rehabilitation of the applicant and his/her present
22 eligibility for a license will consider the following criteria:

23 (1) The nature and severity of the act(s) or crime(s) under consideration as
24 grounds for denial.

25 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
26 under consideration as grounds for denial which also could be considered as grounds
27 for denial under Section 480 of the code.

28 (3) The time that has elapsed since commission of the act(s) or crime(s)
referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole,
probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(March 15, 2006 Conviction for Assault and Battery in 2005)**

3 12. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
4 and 2761, subdivision (f) of the Code in that he was convicted of a crime that is substantially
5 related to the qualifications, duties, and functions of a registered nurse. The circumstances are as
6 follows:

7 a. On or about March 15, 2006, in a criminal proceeding entitled *The City of Artesia*
8 *v. Josh D. La Venia*, in the State of New Mexico Municipal Court, City of Artesia, in Case
9 No. 2005-02367-NT, Respondent was convicted by the Court of assault and battery, a
10 misdemeanor.

11 b. As a result of the conviction, Respondent was ordered to pay a \$500 fine and
12 sentenced to serve 90 days in the Artesia Corrections Department, which sentence was suspended
13 by the Court.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(February 1, 2008 Criminal Conviction for DUI With 0.08% or Higher Blood Alcohol on**
16 **October 28, 2007)**

17 13. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
18 and 2761, subdivision (f) of the Code in that he was convicted of a crime that is substantially
19 related to the qualifications, duties, and functions of a registered nurse. The circumstances are as
20 follows:

21 a. On or about February 1, 2008, in a criminal proceeding entitled *People of the State*
22 *of California v. Josh David La Venia*, in the Superior Court of California, County of Shasta, Case
23 No. MC RD CRTR070010037, Respondent was convicted on his plea of guilty of violating
24 Vehicle Code section 23152(b) (Driving Under the Influence of Alcohol While Having a 0.08%
25 or Higher Blood Alcohol), a misdemeanor.

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1 b. As a result of the conviction, on or about February 1, 2008, Respondent was
2 placed on probation for three years, ordered to obey all laws, pay \$1,974.50 in fees and fines,
3 ordered to serve five (5) days in the county jail, to enroll in and complete a six-month DUI
4 Program, not drive with any measurable amount of alcohol in his system, not enter places where
5 alcohol is primarily sold, and to submit to chemical testing at the request of any peace officer.

6 c. The facts that led to the conviction were that on or about October 28, 2007, Redding
7 Police Department officers came upon a motor vehicle accident involving Respondent's vehicle.
8 Based on observations by officers of intoxication, coupled with the results of a field sobriety test,
9 officers formed the opinion that Respondent was over intoxicated. Officers placed Respondent
10 under arrest and transported him to the Shasta County Jail, where he submitted to two breath tests
11 which came back at 0.19% and 0.18%, respectively.

12 **THIRD CAUSE FOR DENIAL OF APPLICATION**

13 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

14 14. Respondent's application is subject to denial under sections 480, subdivision
15 (a)(3)(A), and 2762, subdivision (b) of the Code in that on or about February 1, 2008, Respondent
16 used alcoholic beverages to an extent or in a manner dangerous or injurious to himself and the
17 public when he operated a motor vehicle with a BAC of .18%/.19%, as detailed in paragraph 13,
18 above, and incorporated here by reference.

19 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

20 **(Unprofessional Conduct - Conviction of an Alcohol-Related Offense)**

21 15. Respondent's application is subject to denial under sections 480, subdivision
22 (a)(3)(A), and 2762, subdivision (c) of the Code in that on or about February 1, 2008, Respondent
23 was convicted of a criminal offense involving the consumption of alcohol as detailed in paragraph
24 13, above, and incorporated here by reference.

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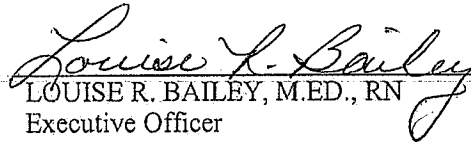
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Josh La Venia for a Registered Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED: _____


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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